IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 14590 of 2004

Between:

1 Ahmed Bin Jaffer, S/o Jaffer Bin Salam,
R/o H.No.15-5-726, Afzalgunj, Hyderabad
2 Salam Bin Jaffer, S/o Jaffer Bin Salam,
R/o H.No.15-5-726, Afzalgunj, Hyderabad
3 Nasir Bin Jaffer, S/o Jaffer Bin Salam,
R/o H.No.15-5-726, Afzalgunj, Hyderabad

..... PETITIONER(S)

AND

1 Union Bank of India, rep.by its Branch Manager, High Court Branch, Hyderabad
2 M/s S.P.Enterprises rep.by its Proprietor Ajay Chand Vijayaraj, S/o Gokulchand V.S.
R/o 5-11 S.R.House Chanda Nagar, Ranga Reddy District
3 Smt Krishna Kanta Devi, W/o Gulabchand,
R/o Plot No.82, Chandanagar, BHEL, R.R.District
4 Sri Sanjaya V S/o Gulabchand V
R/o Plot No.282, MIG II Phase- HUDA Colony, Chandanagar, BHEL, RR District
5 The Recovery Officer, Debts Recovery Tribunal, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction, one more particularly in the nature of a writ of mandamus declaring the action of the 5th respondent in not considering the claim of the petitioners filed in Claim Petition No.49 of 2004 and in seeking to dispossess the petitioners physically through proceedings in R.P.No.361 of 2003 in O.A No.348 of 2002 as being illegal, arbitrary, unconstitutional and contrary to the provisions of the

Recovery of Debts due to Banks and Financial Institutions Act 1993 and the rules incorporated by reference thereunder and consequently direct the 5th respondent to firstly consider the claim petition No.49 of 2004 filed by the petitioners and desist from physically evicting them from the said premises and pass such other order.

Counsel for the Petitioners:MR.S.NIRANJAN REDDY

Counsel for the Respondent No.5: Mr. S. Ramakrishna Rao (Addl. SC FOR CG)

The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)

Petitioners are questioning the action of the 5th respondent in proceeding ahead with the auction proceedings without adjudicating the claim raised by the petitioners qua the property which is put to sale of auction. Petitioners' case is that respondent No.1-bank has obtained an order of recovery of its dues against respondents 2 to 4. Pursuant to the said order, recovery proceedings were initiated. Property of respondents 2 to 4 was sought to be sold by public auction and respondent No.5 issued notice for public auction. Petitioners were in occupation of the property as tenants and they submitted their claim stating that they are the tenants in occupation of the property and if the property is put to public auction, they cannot be physically dispossessed and petitioners will have to appraise the auction purchaser of their interest in the property. Petitioners further allege that the 5th respondent, without further adjudicating the claim of the petitioners and without passing any orders on the stay application filed by them, is proceeding to auction the property and trying to dispossess the petitioners from the property in their occupation.

Counsel has put in appearance on behalf of the respondent No.5, and has proposed to dispose of the writ petition at this stage with some directions.

Accordingly, we dispose of the writ petition with a direction to the 5th respondent that auction proceedings will continue in accordance with law, but till the claim of the petitioners is heard and decided in accordance with law by the Presiding Officer, they will not be actually dispossessed from the property and their rights will be governed by the orders to be passed in the claim petition, which, of course, will be subject to the petitioners' right to challenge the same in accordance with law in appeal, in case, petitioners would feel aggrieved by the orders to be passed.

The writ petition is accordingly disposed of. No costs.

DEVINDER GUPTA,CJ

DATE: 18th August, 2004

C.V. RAMULU,J

Pnb

To

1 The Branch Manager, Union Bank of India, High Court Branch, Hyderabad.

2 The Recovery Officer, Debts Recovery Tribunal, Hyderabad

3 Two C.D. copies